

CHARLES M. HAUPTMAN

IBLA 81-611, 81-663

Decided September 22, 1982

Appeal from a decision of the Montana State Director, Bureau of Land Management, denying the protest of the designation of inventory units MT-060-253 and MT-060-256 as wilderness study areas. 8500 (931).

Affirmed in part; set aside and remanded in part.

1. Federal Land Policy and Management Act of 1976: Wilderness --
Wilderness Act

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherry systems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

2. Federal Land Policy and Management Act of 1976: Wilderness --
Wilderness Act

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and further that if they are not considered, reasonable application of inventory guidelines would be questioned.

3. Federal Land Policy and Management Act of 1976: Wilderness --
Wilderness Act

During the study phase of the wilderness review process, BLM will consider all values, resources, and uses of the lands within a wilderness study area.

4. Federal Land Policy and Management Act of 1976: Wilderness --
Wilderness Act -- Words and Phrases

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by BLM in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

APPEARANCES: Charles M. Hauptman, pro se; Dale D. Goble, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Charles M. Hauptman appeals from a decision of the Montana State Director, Bureau of Land Management (BLM), dated March 16, 1981, denying his protest of the designation of inventory units MT-060-253 and MT-060-256 as wilderness study areas (WSA's). ^{1/} These units, commonly known as the Ervin Ridge unit and the Cow Creek unit, respectively, are located in Blaine and Phillips Counties, Montana, and border in part the Missouri River.

The State Director's action designating the units on appeal as WSA's was taken pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976). That section directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands which were identified during the inventory required by section 201(a) of the Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131(c) (1976). Following review of an area or island, the Secretary shall from time to time report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness.

The wilderness characteristics alluded to in section 603(a) are defined in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976):

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character

^{1/} In BLM's announcement of final inventory decisions, published on Nov. 14, 1980, at 45 FR 75589, these units are numbered MT-066-253 and MT-066-256, respectively.

and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

The wilderness review process undertaken by the State Office has been divided into three phases by BLM: inventory, study, and reporting. The State Director's announcement of wilderness study areas marks the end of the inventory phase of the review process and the beginning of the study phase.

Ervin Ridge (MT-060-253)

In BLM's November 14, 1980, announcement of final intensive inventory decisions, published in the Federal Register at 45 FR 75589, 12,000 acres of the Ervin Ridge unit were designated a WSA and 10,527 acres were dropped from further wilderness review. Appellant's protest of the designation of 12,000 acres as a WSA charged error in BLM's cherrystemming practice and in its finding that outstanding opportunities for solitude or a primitive and unconfined type of recreation exist in the WSA. Appellant also acknowledged that he is the joint owner of nine lode mining claims in the unit; interim wilderness management or wilderness designation, he maintains, precludes mineral development, contrary to the best interest of the country.

[1] BLM's cherrystemming practice, whereby lands occupied by roads or other intrusions are excluded from an area otherwise possessing naturalness, has been held on several occasions to be not contrary to law or any established Department policy. ASARCO, Inc., 64 IBLA 50 (1982), and cases cited therein. Though the boundaries of a WSA "containing" a nonwilderness corridor (cherrystem) might be irregular as a result thereof, section 603(a) does not specify any particular shape for an area that may eventually be recommended for wilderness preservation. Appellant's characterization of this policy as ludicrous does not establish error in BLM's actions.

In the narrative summary accompanying BLM's final inventory decision, BLM stated that outstanding opportunities for solitude exist in the WSA. Appellant takes exception to this finding, pointing out that traffic on the unit's boundary would make opportunities for solitude impossible to anyone not hiding in the bottom of the deepest coulees. In concluding that outstanding opportunities for solitude exist in the WSA, BLM found that the unit possessed an extremely dissected topography with large pockets of conifers to provide seclusion.

The recurring disagreement over the issue of solitude illustrates the highly subjective judgment that BLM is called upon to make. In order to

guide the exercise of this judgment, BLM has published the Wilderness Inventory Handbook (WIH, Sept. 27, 1978) which addresses the issue of solitude at page 13:

In making * * * [the determination whether a unit has outstanding opportunities for solitude.] consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit.

Factors or elements influencing solitude may include size, natural screening, and ability of the user to find a secluded spot. It is the combination of these and similar elements upon which an overall solitude determination will be made.
[Emphasis supplied.]

The traffic that appellant claims precludes outstanding opportunities for solitude exists on the unit's boundary roads. These roads are technically outside the unit, and their effect on the suitability of the WSA for wilderness preservation is generally considered during the study phase of the wilderness review program.

[2] Organic Act Directive (OAD) 78-61, Change 3, provides that the sights and sounds outside a WSA are properly considered during the study phase absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and further that if such impacts are not considered, reasonable application of inventory guidelines would be questioned. Imprints of man outside the unit, such as roads, highways, and agricultural activity, are not necessarily significant enough to cause their consideration during the inventory phase. Id. at 4.

We hold that BLM's resolution of the issue whether such impacts are so extremely imposing is entitled to considerable deference. Ruskin Lines, 61 IBLA 193 (1982). This deference is justified, we believe, by the record assembled by BLM evidencing its firsthand knowledge of the lands at issue. In addition, the record contains the comments of diverse individuals and groups as to the fitness of the unit for wilderness preservation. The study phase begins upon completion by BLM of its inventory duties. While appellant's argument may ultimately cause BLM to recommend the Ervin Ridge WSA as unsuitable for wilderness preservation, it is premature at this time. Appellant's participation during the study phase is invited. 45 FR 75575 (Nov. 14, 1980).

[3] Similarly appropriate for the study phase is appellant's contention that wilderness designation would be contrary to the best interest of the country by increasing the nation's dependence for minerals upon foreign imports. During the study phase, BLM will consider all values, resources, and uses of the lands at issue. Indeed, section 603(a) requires that prior to any recommendation for the designation of an area as wilderness, the Secretary

shall cause mineral surveys to be conducted by the Geological Survey and the Bureau of Mines to determine mineral values. George Azar, 63 IBLA 172, 175 (1982). During the period of wilderness review and until Congress has determined otherwise, the Secretary is directed by section 603(c) to continue to manage lands possessing wilderness characteristics in a manner so as not to impair the suitability of such area for preservation as wilderness, subject, however, to the continuation of existing mining and grazing uses and mineral leasing in the manner and degrees in which the same was being conducted on October 21, 1976. 43 U.S.C. § 1782(c) (1976).

The State Director's decision denying appellant's protest of the designation of the Ervin Ridge unit as a WSA is affirmed.

Cow Creek (MT-060-256)

In the final inventory decision for the Cow Creek unit, BLM designated 36,200 acres as a WSA and dropped 34,913 acres from further wilderness review. 45 FR 75589 (Nov. 14, 1980). Appellant's protest of this decision again focused on BLM's cherrystemming practice and on the importance of unencumbered mineral exploration of the WSA lands. Our discussion of these issues above is equally applicable to the lands in the Cow Creek unit and will not be repeated here.

In addition, appellant contended that the unit contains numerous well-used roads and range management developments, such as fences and reservoirs. Twenty-five photographs accompanied this protest, depicting man-made impacts that, in appellant's view, preclude further wilderness consideration of the unit.

BLM denied appellant's protest without discussion of the impacts presented. The BLM inventory file does, however, acknowledge the presence of each route and reservoir contained in appellant's photographs. ^{2/} Its decision to deny appellant's protest despite the presence of these impacts is consistent with its inventory finding that the unit's topography and vegetation hide its impacts and help to retain its sense of naturalness. Naturalness is present in a unit if the imprint of man's work therein is substantially unnoticeable (WIH at 6).

Appellant's renewed allegations of intrusions or imprints of man within the WSA do not by themselves establish error in the State Director's decision. In setting forth the definition of wilderness, quoted above, Congress did not require that a wilderness area be free of all imprints of man. Instead, Congress required that an area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable. Indeed, in H.R. Rep. No. 95-540, 94th Cong., 2d Sess. 6 (1977),

^{2/} Particularly helpful in this respect is a map of the unit, prepared by BLM, showing the location of intrusions, such as vehicle routes, wells, reservoirs, and fences.

a report prepared to accompany H.R. 3454, ^{3/} there are listed several examples of intrusions which may be allowed in certain cases in a designated wilderness area. Among these are trails, trail signs, bridges, fire towers, firebreaks, fire suppression facilities, pit toilets, fisheries enhancement facilities, fire rings, hitching posts, snow gauges, water quantity and quality measuring devices, and other scientific devices. Based on this guidance, BLM has set forth in its WIH examples of intrusions found on the public lands which, it finds, may be present within a WSA. These additional items include research monitoring markers and devices, wildlife enhancement facilities, radio repeater sites, air quality monitoring devices, fencing, and spring development.

As there is apparently no question that the lands contain imprints of man, appellant's objections to such imprints are in essence a disagreement with BLM as to whether such imprints are substantially noticeable. This question again calls for a highly subjective determination by BLM. In Conoco, Inc., 61 IBLA 23 (1980), we held that BLM's subjective judgment as to an area's naturalness qualities was entitled to considerable deference by this Board. We believe a similar holding is appropriate in the instant appeal. Inventory case files assembled by BLM evidence its firsthand knowledge of the lands at issue. In addition, BLM has received the benefit of numerous comments from individuals and groups of wide-ranging interests. BLM's expertise and familiarity with the units on the ground entitle it, we believe, to our considerable deference in such subjective determinations. Appellant's views to the contrary, while not unreasonable, do not undermine this deference.

[4] There appears in appellant's statement of reasons an allegation of a road in sec. 27, T. 25 N., R. 22 E., that appellant contends has received definite bulldozed or graded cuts. Appellant further contends that BLM maintained this road through the summer of 1979 with a grader or patrol. No mention of this road was made by appellant in his protest, and BLM's inventory files do not contain a reference to it. This route allegedly provides access to appellant's mining claims.

Unlike appellant's other allegations of roads in the units on appeal, his allegation in this instance includes a reference to both mechanical improvement and mechanical maintenance of the route at issue. This reference is important for purposes of wilderness review, because wilderness review extends only to roadless areas of the public lands possessing sufficient size and wilderness characteristics. In H.R. Rep. No. 1163, 94th Cong., 2d Sess. 17 (1976), the term "roadless" is defined: "The word 'roadless' refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road."

Appellant should have informed BLM of this vehicle route in sec. 27 during the comment period beginning March 28, 1980. 45 FR 20570 (Mar. 28, 1980). If appellant's allegation of a road in sec. 27 is accurate, its

^{3/} This bill was later enacted as the Endangered American Wilderness Act, 16 U.S.C. § 1132 (Supp. II 1978).

exclusion from the WSA by cherrystemming would not be improper. While BLM's response to the protest is correct, because of this allegation concerning the road, we will set aside BLM's decision of the Cow Creek unit and remand for consideration of this question. BLM shall issue a new protest decision dealing solely with appellant's allegation of a road in sec. 27. A right of appeal shall be provided. In all other respects, the State Director's decision of March 16, 1981, is affirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed in part and set aside and remanded in part for consideration of the aforementioned vehicle route in sec. 27.

Anne Poindexter Lewis
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Douglas E. Henriques
Administrative Judge

